IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.393 of 2007
Date of decision 13 .12 .2007

Commissioner of Income Tax .. Appellant

Versus

M/s Munjal Castings .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

PRESENT: Mr.Sanjiv Bansal, Advocate for the appellant

M.M.Kumar, J.

This order shall dispose of I.T.A. Nos. 393, 394, 395 and 401 of 2007 which have been filed under Section 260 A of the Income Tax Act, 1961 (for brevity the Act'). For the purposes of this judgement, facts are being taken from ITA No.393 of 2007.

The appeal is directed against the order dated 28.2.2007 passed by the Income Tax Appellate Tribunal, Chandigarh Bench B, Chandigarh in ITA No. 475/Chandi/2005 in respect of assessment year 2000-01. It has been claimed that the following substantial questions of law would arise for determination of this Court:

> "1.Whether on the facts and in law, the ITAT was legally justified in cancelling the order u/s 263 of IT Act passed by the ld. CIT; and
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> 2.Whether the ITAT is right in law in cancelling the order of the Commissioner of Income Tax passed u/s 263 of the IT Act by holding the same to be not warranted in the facts of the present case?"

Brief facts of the case are that the assessee filed original return on

30.10.2000 declaring loss of Rs. 60,54,932/-. On 30.4.2001, the assessee filed revised return declaring income of Rs. 42,38,320/-. The case of the assessee was processed under Section 143(1)(a) of the Act and selected for scrutiny. Accordingly notices u/s 142(1) and 143(2) of the Act were issued. In response to notice, Manmohan Singh, CA attended the assessment proceedings and the information as called for was filed and examined . The assessee produced books of accounts . After discussing all these facts the Assistant Commissioner of Income Tax, Central Circle IV, Ludhiana accepted the income of Rs.42,38,320/- vide order dated 31.3.2003 (Annexure 1). The Commissioner of Income Tax (Central),Ludhiana vide order dated 24.3.2005(Annexure A II) exercising revisional jurisdiction under Section 263 of the Act directed the Assessing Officer to recompute the taxable income of the assessee by disallowing the expenditure on account of interest of Rs. 22,74,276 allowed under Section 14 A of the Act. The Assessing Officer was also directed to give effect to various provisions of the Act in respect of charging of interest including withdrawal of interest u/s 244 A of the Act while computing the additional tax liability. The assessee further challenged the said order before the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh. The Tribunal vide order dated 28.2.2007 allowed the appeals and cancelled the order of the Commissioner of Income Tax dated 24.3.2005. The Tribunal in para 16 of its order considered the issue as to whether the order of the Assessing Officer was so erroneous as to warrant exercise of revisional jurisdiction by the Commissioner of Income Tax (Central) under Section 263 of the Act. After perusing the record, the Tribunal recorded the satisfaction that the Assessing Officer had made enquiries regarding the applicability of proviso

to section 14A of the Act during the course of assessment proceedings. A reference has also been made to the questionnaire issued by the Assessing Officer in February, 2003 showing that several queries had been raised by the Assessing Officer including query no.16 relating to disallowance under Section 14 A of the Act. The assessee had filed reply on 23.2.2003 to query no. 16 claiming that no disallowance under Section 14 A of the Act was to be made. On 7.3.2003, the assessee through its counsel had sent detailed reply to the Assessing Officer regarding disallowance under Section 14 A of the Act claiming that interest paid to the partners is permissible deduction under Section 40(b)(iv) of the Act provided the conditions specified are satisfied. The attention of the Assessing Officer was invited to the provisions of Section 28(v) to emphasise that interest, salary, bonus, commission and remuneration has to be treated as income under the head profits and gains of business in the hands of the partner to the extent deduction is allowed in the case of firm by clause (b) of Section 40 of the Act. The assessee had also placed reliance on the judgement of Hon'ble the Supreme Court in the case of CIT v. R.M.Chidambaram Pillai etc. (1977) 106 ITR 292. There were a number of other things claimed and the department did not deny the filing of the afore-mentioned documents which were certified to have been filed by the revenue authorities. The Tribunal thus concluded that the Assessing Officer had accepted the claim of the assessee on the basis of contentions advanced before him. The Tribunal extensively quoted the decision of the Tribunal in the case of M/s Ind. Sphinx Precision Ltd. v. CIT in ITA Nos. 549 and 550/Chandi/2004 for assessment years 2000-01 and 2001-02 and went on to observe that judgement of Hon'ble the Supreme Court in the case of

R.M.Chindamabaram Pillai (supra) would be squarely applicable in respect of salary paid to partners yet it also accepted the position that a different view might have been possible. It also held that in the light of scheme of taxation of firm and its partners the claim of the assessee could not be totally ignored. The salary and interest paid to the partners cannot be regarded as expenses incurred for the purposes of earning income in the light of scheme of taxation of firms and its partners. Placing reliance on the judgement of Hon'ble the Supreme Court in the case of Suwalal Anandilal Jain v. CIT (1997) 224 ITR 753, the Tribunal observed that passage from Lindley on the law of partnership has been quoted by their Lordships with approval and the same reads as under:

> " In point of law, a partner may be the debtor or the creditor of his co -partners, but he cannot be either debtor or creditor of the firm of which he is himself a member, nor can he be employed by his firm, for, a man cannot be his own employer"

After quoting the afore-mentioned passage, the Tribunal went on to observe as under:

> "Viewed in the light of scheme of taxation referred to above, the view canvassed on behalf of the assessee and impliedly accepted by the Assessing Officer is one of the possible views. As pointed out earlier, the Hon'ble Supreme Court had laid down the law that the Commissioner of Income Tax does not under Section 263 have the power to substitute his own view if the view taken by the Assessing Officer is one of the possible views not a view unsustainable in law. On the basis of the decision of the Supreme Court in the case of Malabar Industrial

Co. Ltd. v. CIT (2000)243 ITR 83 , the Commissioner of Income Tax had no jurisdiction u/s 263 to set aside the assessment order(s) in the case of the assesses in so far as the Assessing Officer has accepted one of the possible views convassed before him by the assessee. It is also noteworthy that the assessee has not escaped the taxation in respect of interest allowed as a deduction in computing the income of the firm in so far as the partners have paid the taxes on such income in their individual assessments. Therefore, it cannot be said that great prejudice has been caused to the Revenue by accepting the view considered view that the order passed by the Commissioner of Income Tax u/s 263 lacks jurisdiction. We accordingly cancel the same."

After hearing the learned counsel for the revenue we are of the considered view that no question of law warranting admission of the appeal would arise because firstly there would be no tax effect as the interest income realised from the capital invested by the partners is bound to be assessed in their hands. They cannot, in any case be taxed twice. The Tribunal has dealt with the afore-mentioned issue in paras 21,22,23 and 24 of its order. Moreover, if the view taken by the Assessing Officer is one of the possible view then it cannot constitute the basis for the Commissioner to brush aside that view in preference to his own view in exercise of jurisdiction under Section 263 of the Act. In that regard the Tribunal has rightly placed reliance on a judgement of Hon'ble the Supreme Court in the case of Malabar Industrial Com. Ltd (supra). The following para of the judgement fully supports the conclusion which has rightly been drawn by

the Tribunal.

> " The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income tax Officer adopted one of the courses permissible in law and it has resulted in loss of Revenue; or where two views are possible and the Income-tax officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. *Rampyari Devi Saraogi v. CIT (1968) 67 ITR 184(SC) and in Smt., Tara Devi Aggarwal v. CIT (1973) 88 ITR 323 (SC)."* (emphasis added)

It is thus evident that the Assessing Officer has taken one view which is probable if we examined the same in the light of the judgement of Hon'ble the Supreme Court in the case of R.M.Chidambaram Pillai's case (supra). It has further been held by the Tribunal that it may still be possible to take another view. Therefore, merely on the basis that another view is possible the Commissioner cannot acquire revisional jurisdiction as contemplated by Section 263 of the Act. Therefore, we are not inclined to

admit the appeals.

Reliance on the judgement of Hon'ble the Supreme Court in the case of Commissioner of Income Tax v. Ralson Industries Ltd. (2007) 288 ITR 322 by the learned counsel for the revenue is wholly mis-placed because in that case it was held that the Commissioner of Income Tax would still enjoy the power of revision even if the order under Section 263 of the Act has been passed after passing of order of rectification by the Assessing Officer under Section 154 of the Act. The argument appears to be that since some observations have been made by the Tribunal against the order of the Commissioner passed under Section 263 of the Act that the Assessing Officer had passed the order after scrutiny under Section 147(3) of the Act and therefore the judgement is applicable. On a close scrutiny of the observations made by the Tribunal the presence of such a reason cannot be ruled out. However, the Tribunal has given a number of other reasons also. A single reason of this nature may not constitute the basis to conclude that the Commissioner of Income Tax would not enjoy the revisional jurisdiction as has been held by Hon'ble the Supreme Court in Ralson Industries Ltd. case (supra). However, if there are other compelling reasons then the matter would lie entirely in different area and the Commissioner would have the revisional jurisdiction as is the situation in the present case. Therefore, we are not impressed with the argument raised on the basis of the judgement in the case of Ralson Industries Ltd. (supra). Therefore, we have no hesitation to reject the afore-mentioned argument. Consequently, all the appeals fail and are accordingly dismissed.

A copy of this order be placed on the files of all connected appeals.

(M.M.Kumar)
Judge

(Rakesh Kumar Jain)
Judge

13.12.2007
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